



Hualapai Department of Cultural Resources

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March 14, 2018

Secretary Marlene Dortch
445 12th Street SW
Federal Communications Commission
Washington, DC 20554

RE: Opposition of the Hualapai Tribe to draft Report and Order (WT 17-79)

Dear Chairman Pai and Members of the Commission:

As Tribal Historic Preservation Officer (THPO) for the Hualapai Tribe, I write to oppose the draft Report and Order released on March 1, 2018 that purports to limit the obligations of the Federal Communications Commission (FCC) under the National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA), impeding the exercise by tribal nations of procedural rights secured by those laws. The approach of the draft will be detrimental to tribal governments and to tribal cultural and historic resources, and will do very little to encourage deployment of wireless service to areas, like ours, that need it most.

Over the past quarter century, due in large part to amendments enacted in 1992, the National Historic Preservation Act (NHPA) has become a very important federal law for preserving historic properties that are important for Indian tribes. The Hualapai Tribe was one of the first tribes to have established a THPO program and to have assumed responsibilities for our tribal lands pursuant to an agreement with the Secretary of the Interior, as authorized by section 101(d)(2) of the NHPA as amended. Our THPO program has been operating for more than two decades. The Hualapai Reservation in northwestern Arizona, which was established by Executive Order in 1883, encompasses an area of about one million acres. This is about one-seventh of the homeland territory that the Hualapai people inhabited before the Reservation era. The Hualapai people continue to have cultural and religious connections with many places that are outside the boundaries of the Reservation, and so the Ordinance authorizes the Hualapai Department of Cultural Resources (HDCR) to compile the Hualapai Register of Heritage Places, which now includes more than one thousand sites, the majority of which are located outside Reservation boundaries. The Ordinance also authorizes HDCR to represent the Tribe in consultations with federal agencies and the State Historic Preservation Officer (SHPO) for federal and federally-assisted undertaking with the potential to affect historic properties located on Hualapai traditional use lands, i.e., lands outside Reservation boundaries. Accordingly, HDCR devotes a considerable amount of staff time and other resources to the review of proposed undertakings outside Reservation boundaries.

Fifteen years ago, the FCC stated that it was impractical for it to consult on thousands of existing, new and proposed cell sites, despite its obligation to do so. In response, Indian Country endorsed the Tower Construction Notification System (TCNS) as a solution that

facilitates the telecommunications industry working directly with tribal nations to address issues of concern, rendering it unnecessary for the FCC to engage in direct consultation except in rare cases.

The Commission has recognized that it “has a trust responsibility to, and government-to-government relationship with, federally recognized Tribal Nations.” Draft Report and Order, ¶ 16. The Commission has no such relationship with the wireless industry. The draft Report does not reflect this trust responsibility and diminishes the Hualapai Tribe’s ability to protect our cultural and historic properties. We endorse the comments submitted in this matter by the National Congress of American Indians, United South and Eastern Tribes, and National Association of Tribal Historic Preservation Officers, with support from eleven regional inter-tribal organizations, including the Inter-Tribal Council of Arizona. Briefly, the draft Report fails in that it:

- (1) Concludes that actions by the Commission to allow installations of small wireless facilities are not “undertakings” or “major federal actions,” thereby circumventing the review processes established pursuant to NHPA and NEPA;
- (2) Eliminates tribal fees for initial historic preservation assessments by tribal governments, encouraging industry to exclusively rely on its own consultants who typically have limited understanding of Native cultures, rather than to access the unique expertise of tribal nations with regard to impacts on their own cultural areas; and
- (3) Mischaracterizes the extent of formal consultation carried out prior to the release of the draft Report and Order by including listening sessions, briefings and other meetings that are not true consultations.

Rolling back protections for tribal cultural and historic properties will have severe consequences for the Hualapai Tribe. Once tribal cultural and historic properties are damaged, the damage is often irreparable. Therefore, like other tribes throughout the country, we fear we will have no recourse if the deployment of wireless technology results in the destruction of our tribal cultural and historic properties. Accordingly, we ask that all Commissioners vote against adopting this draft Report and Order.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dawn Hubbs', with a long horizontal line extending to the right.

Dawn Hubbs, Tribal Historic Preservation Officer

cc: Dr. Damon Clarke, Chairman
Hualapai Tribal Council